

IN THE MATTER OF:

Western Pacific Railroad
Oroville, Butte County, California
EPA ID No. CAD 980894679
Site #R4

U.S. EPA Region IX
CERCLA Docket No. 93-18

Respondent:

Union Pacific Railroad

Proceeding Under Sections 104,
106(a), 107 and 122 of the
Comprehensive Environmental
Response, Compensation and
Liability Act, as amended, 42
U.S.C. §§9604, 9606(a), 9607
and 9622

1. This Order is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Union Pacific Railroad, a Utah corporation ("Respondent"). This Order provides for the performance of removal actions by Respondent and the reimbursement of response costs incurred by the United States in connection with the property located at 4900 Baggett Marysville Road in Oroville, Butte County, California, (the "Western Pacific Railroad Site" or the "Site"). This Order requires the Respondent to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or

1 threatened release of hazardous substances at or from the Site.

2 2. This Administrative Order on Consent ("Order") is issued
3 pursuant to the authority vested in the President of the United
4 States by sections 106(a) and 122 of the Comprehensive
5 Environmental Response, Compensation, and Liability Act of 1980,
6 42 U.S.C. §§ 9606(a) and 9622, as amended ("CERCLA"), and
7 delegated to the Administrator of the United States Environmental
8 Protection Agency ("EPA") by Executive Order No. 12580, January
9 23, 1987, 52 Federal Register 2923, and further delegated to the
10 Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-
11 B, and further delegated to the Director, Hazardous Waste
12 Management Division, Region IX ("Director").

13 3. EPA has notified the State of California ("State") of
14 this action pursuant to section 106(a) of CERCLA, 42 U.S.C.
15 §9606(a). Respondent's participation in this Order shall not
16 constitute or be construed as an admission of liability or of EPA
17 findings or determinations contained in this Order except in a
18 proceeding to enforce the terms of this Order. Respondent agrees
19 to comply with and be bound by the terms of this Order.
20 Respondent further agrees that it will not contest the basis or
21 validity of this Order or its terms. The activities undertaken
22 pursuant to this Order, if consistent with this Order, shall be
23 deemed consistent with the NCP.

24 25 26 II. PARTIES BOUND

27 4. This Order applies to and is binding upon EPA, and upon
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1 Respondent and its directors, officers, employees, agents,
2 receivers, trustees, successors and assigns. Any change in
3 ownership or corporate status of Respondent including, but not
4 limited to, any transfer of assets or real or personal property
5 shall in no way alter Respondent's responsibilities under this
6 Order.

7 5. Respondent shall ensure that its contractors,
8 subcontractors, and representatives receive a copy of this Order
9 and comply with this Order. Respondent shall be responsible for
10 any noncompliance by such persons.

11 III. DEFINITIONS

12 6. Unless otherwise expressly provided herein, terms used
13 in this Order which are defined in CERCLA or in regulations
14 promulgated under CERCLA shall have the meaning assigned to them
15 in CERCLA or its implementing regulations. Whenever terms listed
16 below are used in this Order or in the documents attached to this
17 Order or incorporated by reference into this Order, the following
18 definitions shall apply:

19 "CERCLA" shall mean the Comprehensive Environmental
20 Response, Compensation, and Liability Act of 1980, as amended, 42
21 U.S.C. § 9601 et seq.

22 "Contractor" shall mean the individual(s), company or
23 companies retained by or on behalf of the Respondent to undertake
24 and complete the Work. Each contractor or subcontractor shall be
25 qualified to do those portions of the Work for which it is
26 retained.

27 "Day" shall mean a calendar day unless expressly stated to
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1 be a working day. "Working day" shall mean a day other than a
2 Saturday, Sunday, or Federal holiday. In computing any period of
3 time under this Order, where the last day would fall on a
4 Saturday, Sunday, or Federal holiday, the period shall run until
5 the close of business of the next working day.

6 "EPA" shall mean the United States Environmental Protection
7 Agency and any successor departments or agencies of the United
8 States.

9 "National Contingency Plan" or "NCP" shall mean the National
10 Oil and Hazardous Substances Pollution Contingency Plan
11 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,
12 codified at 40 C.F.R. Part 300, including, but not limited to,
13 any amendments thereto.

14 "Removal Action" shall mean those activities to be
15 undertaken by the Respondent to implement the work plans
16 submitted pursuant to this Order and approved by EPA.

17 "Section" shall mean a portion of this Order identified by a
18 roman numeral.

19 "Site" shall mean the Western Pacific Railroad Superfund
20 site.

21 "Work" shall mean all activities Respondent is required to
22 perform under this Order.

23 24 IV. FINDINGS OF FACT

25 Site Description

26 7. The Western Pacific Railroad Superfund Site is located
27 immediately southwest of the City of Oroville in Butte County,

1 California. The Site is approximately 90 acres and consists of
2 two distinct operating areas separated by the main railroad
3 tracks. The western portion of the rail yard, known as the "Pond
4 Area," includes a former surface impoundment, and the eastern
5 portion, known as the "Fueling Area," includes the former
6 fueling, servicing and maintenance areas.

7 8. The Site is located in a mixed-use area, with a
8 residential area located directly across Baggett Marysville Road
9 to the east and industrial areas to the north, west and south.
10 The Louisiana-Pacific Corporation Superfund site is located
11 approximately one mile west-southwest of the Western Pacific
12 Superfund Site. The Koppers Company, Inc., Superfund site is
13 located one mile southwest of the Western Pacific Superfund Site.

14 9. On the Site just west of the Fueling Area is a public
15 drinking water supply well. Union Pacific Railroad leases this
16 well to California Water Service which currently uses it to
17 supply drinking water to the Oroville area.

18 Site History and Operations

19 10. Western Pacific Railroad ("WPRR") first developed the
20 Site in the early 1900s to repair, service and clean railcars.
21 Specific activities included welding, machining, fabricating and
22 fueling of locomotives. Over the century various structures were
23 built, including a roundhouse and turntable, concrete inspection
24 pits, a fueling tower, storage tanks and an oil-water separator.

25 11. In 1970 Solano Railcar Company leased the roundhouse
26 area from WPRR. Solano's primary activities included
27 sandblasting, painting, welding and machining locomotives and

1 rail cars. The roundhouse reportedly burned to the ground in
2 1976.

3 12. In 1982, Union Pacific Railroad ("UPRR") acquired
4 Western Pacific Railroad and continued to lease to Solano.
5 Solano continued to operate an independent rail car repair and
6 maintenance facility at the Site until 1990, when it filed for
7 bankruptcy.

8 13. A former surface impoundment west of the railroad
9 tracks in the Pond Area received wastewater, grease and oil and
10 may have received solvents from the fueling area operations. The
11 discharge of wastewater into the surface impoundment, an unlined
12 pond, took place from the 1950's until 1987.

13 14. An underground storage tank in the southeast section of
14 the Fueling Area held waste oil and solvents. This tank was
15 removed in 1989 by UPRR.

16 Enforcement History

17 15. In 1986 the California Regional Water Quality Control
18 Board, Central Valley Region ("RWQCB") listed the surface
19 impoundment as a toxic pit under the Toxic Pits Cleanup Act.
20 UPRR complied with the RWQCB request to stop discharging to the
21 pond. Four monitoring wells were installed in the pond area by
22 Union Pacific Railroad.

23 16. In 1989 the RWQCB issued an order to UPRR and Solano
24 Railcar Company to close the waste pond, remove all of the soil
25 in it and clean up all contaminated soil around the fueling area.
26 A waste classification study revealed that the soil contained
27 arsenic, barium, copper, nickel and chromium; total petroleum
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1 hydrocarbons (TPH) up to 13,000 mg/kg; and benzene, toluene,
2 phenanthrene, acetone, methylene chloride and chlorobenzene.

3 17. In late 1989 UPRR excavated the soil and residues from
4 the pond and backfilled the pond with soil from off-site.

5 18. The Western Pacific Railroad Site was placed on the EPA
6 National Priorities List in August 1990.

7 Respondent

8 19. Respondent Union Pacific Railroad is a Utah corporation
9 and is the owner and operator of the Western Pacific Railroad
10 Superfund Site.

11 Threat to Public Health or Welfare or the Environment

12 20. The presence of detectable levels of chlorinated
13 compounds in the California Water Supply (CWS) drinking water
14 well in 1986 led to a RWQCB directive to UPRR to investigate
15 potential contaminants in soil and groundwater in the Fueling
16 Area. Results of the investigation revealed the presence of
17 volatile organic compounds (VOCs) in groundwater. Lead and
18 chromium were detected above federal and State of California
19 Maximum Contaminant Levels (MCLs) in unfiltered groundwater
20 samples. Metals have not been detected above MCLs in filtered
21 groundwater samples.

22 21. In 1989 an underground storage tank (UST) was removed;
23 it contained toluene, dichlorobenzene (1,4 DCB and 1,2, DCB) and
24 trichloroethylene (TCE). A monitoring well near the UST shows
25 elevated levels of VOCs, primarily 1,1-dichloroethylene (1,1-DCE)
26 and, in one or two sampling events, low levels of aromatic
27 hydrocarbons, including benzene, toluene, ethyl benzene and

1 xylene.

2 22. The CWS well is located 650 feet in a generally
3 downgradient direction (west) from the site of the UST. The VOC
4 plume associated with the UST is located in the same aquifer as
5 the CWS well and therefore is a threat to the drinking water
6 supply well.

7 V. CONCLUSIONS OF LAW AND DETERMINATIONS

8 Based on the Findings of Fact set forth above, and the
9 Administrative Record supporting the removal actions set forth in
10 this Order, EPA determines that:

11 23. The Western Pacific Railroad Site is a "facility" as
12 defined by section 101 (9) of CERCLA, 42 U.S.C. § 9601(9).

13 24. Each substance identified in the Findings of Fact above
14 is a "hazardous substance" as defined by section 101 (14) of
15 CERCLA, 42 U.S.C. § 9601(14).

16 25. Respondent is a "person" as defined by section 101(21)
17 of CERCLA, 42 U.S.C. § 9601(21).

18 26. Respondent is the "owner" and/or "operator" of the
19 facility, as defined by section 101(2) of CERCLA, 42 U.S.C. §
20 9601(20), and within the meaning of section 107(a)(1) of CERCLA,
21 42 U.S.C. § 9607(a)(1).

22 27. The conditions described in the Findings of Fact above
23 constitute an actual or threatened "release" into the
24 "environment" as defined by sections 101(8) and (22) of CERCLA,
25 42 U.S.C. §§ 9601(8) and (22).

26 28. The conditions present at the facility constitute a
27 threat to the public health, welfare, or the environment based
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1 upon the factors set forth in section 300.415(b)(2) of the NCP.
2 These factors include, but are not limited to, actual or
3 potential contamination of drinking water supplies or sensitive
4 ecosystems. This factor is present at the Site due to the
5 presence of 1,1-DCE, 1,1-DCA and TCE in the drinking water
6 aquifer. A municipal drinking water supply well is located 650
7 feet downgradient from the source of contamination.

8 29. The actual or threatened release of hazardous
9 substances from the Site may present an imminent and substantial
10 endangerment to the public health, welfare, or the environment
11 within the meaning of section 106(a) of CERCLA, 42 U.S.C. §
12 9606(a).

13 30. The removal actions required by this Order are
14 necessary to protect the public health, welfare, or the
15 environment, and are not inconsistent with the NCP and CERCLA.

16 VI. ORDER

17 Based upon the foregoing Findings of Fact, Conclusions of
18 Law, Determinations, and the Administrative Record for this Site,
19 it is hereby ordered and agreed that Respondent shall comply with
20 the following provisions, including but not limited to all
21 attachments to this Order, all documents incorporated by
22 reference into this Order, and all schedules and deadlines in
23 this Order, attached to this Order, or incorporated by reference
24 into this Order, and perform the following actions:

25 Designation of Contractor, Project Coordinator, and On-Scene 26 Coordinator

27 31. Respondent shall perform the Work or retain a
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1 contractor to implement this removal action. Respondent shall
2 notify EPA of Respondent's qualifications or the name and
3 qualification of such contractor within five (5) business days of
4 the effective date of this Order. Respondent shall also notify
5 EPA of the names and qualifications of any other contractors or
6 subcontractors retained to perform work under this Order at least
7 ten (10) days prior to commencement of such work. EPA retains
8 the right to disapprove of any, or all, of the contractors and/or
9 subcontractors retained by the Respondent. If EPA disapproves of
10 a selected contractor, Respondent shall retain a different
11 contractor within thirty (30) business days following EPA's
12 disapproval and shall notify EPA of that contractor's name and
13 qualifications within thirty-five (35) business days of EPA's
14 disapproval.

15 32. Within ten (10) days after the effective date of this
16 Order, the Respondent shall designate a Project Coordinator who
17 shall be responsible for administration of all the Respondent's
18 actions required by the Order. Respondent shall submit the
19 designated coordinator's name, address, telephone number, and
20 qualifications to EPA. To the greatest extent possible, the
21 Project Coordinator shall be present on site or readily available
22 during site work. EPA retains the right to disapprove of any
23 Project Coordinator named by the Respondent. If EPA disapproves
24 of a selected Projected Coordinator, Respondent shall designate a
25 different Project Coordinator and shall notify EPA of that
26 person's name and qualifications within ten (10) business days
27 following EPA's disapproval. Receipt by Respondent's Project
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1 Coordinator of any notice or communication from EPA relating to
2 this Order shall constitute receipt by Respondent.

3 33. The EPA has designated Holly Hadlock of the Superfund
4 Enforcement Branch as its Project Coordinator. Respondent shall
5 direct all submissions required by this Order to the Project
6 Coordinator at:

7 Holly Hadlock
8 U.S. EPA, H-7-3
9 75 Hawthorne Street
San Francisco, California 94105
Telephone: (415) 744-2244

10 34. EPA and Respondent shall have the right to change their
11 designated Project Coordinator. EPA shall notify the Respondent,
12 and Respondent shall notify EPA, three (3) business days before
13 such a change is made. The initial notification may be made
14 orally but it shall be promptly followed by a written notice.
15 (See Section VII in this Order - Authority of the EPA Project
16 Coordinator).

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19 Work to Be Performed

20 35. Within 21 days of the effective date of this Order,
21 Respondent shall erect a fence with a locked gate to establish
22 site security and prevent unauthorized access. The fence shall
23 surround the area east of the rail lines where historic
24 activities occurred as shown on the map attached. The fence
25 shall be a standard six-foot fence with three-strand barbed wire
26 along the top and shall be posted with warning signs.

27 36. Respondent shall perform, at a minimum, the following
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1 response activities:

2 A. Design, construct and implement a system that will
3 contain the 1,1 DCE contaminant plume and will treat the
4 groundwater to reduce contamination to federal and state
5 MCLs.

6 B. Implement a monitoring program for both the aquifer
7 control and water treatment systems.

8 C. Perform quarterly groundwater sampling including
9 turbidity data in order to determine if the wells are properly
10 installed and sampled and to ensure groundwater samples are
11 representative of the drinking water.

12 37. Respondent has submitted a Work Plan for the removal
13 actions. EPA may approve, disapprove, require revisions to, or
14 modify the Work Plan. If EPA requires revisions, Respondent
15 shall submit a revised Work Plan within thirty (30) days of
16 receipt of EPA's notification of the required revisions.
17 Respondent shall implement the Work Plan as finally approved in
18 writing by EPA in accordance with the schedule approved by EPA.
19 Once approved, or approved with modifications the Work Plan, the
20 schedule, and any subsequent modifications shall be fully
21 enforceable under this Order. Respondent shall notify EPA at
22 least 48 hours prior to performing any on-site work pursuant to
23 the EPA-approved Work Plan. Respondent shall not commence or
24 undertake any removal actions at the Site without prior EPA
25 approval.

26 Engineering Evaluation/Cost Analysis

27 38. Respondent has submitted an Engineering Evaluation/Cost
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1 Analysis (EE/CA) for Phase I. EPA may require revisions to, or
2 modify, the EE/CA. If EPA requires revisions, Respondent shall
3 submit a revised EE/CA within thirty (30) days of receipt of
4 EPA's notification of the required revisions.

5 System Design Basis

6 39. Respondent shall incorporate into the current Work Plan
7 a System Design Basis Technical Memorandum (SDBTM) that will
8 establish the basis for design of the groundwater treatment
9 system. The SDBTM will present the design criteria, which will
10 include a restatement of previous data and other parameters
11 necessary for satisfactory engineering. There shall be a
12 narrative description of the engineering and construction
13 approaches to the project and a conceptual description of the
14 instrumentation scheme and control logic for the treatment
15 system. Because of the standard nature of the treatment system
16 and the need to move quickly, 10%, 30% and 60% designs will not
17 be required. Therefore, the SDBTM must be comprehensive to
18 ensure that Respondent submits an adequate final design report.
19 The SDBTM shall include:

- 20 • Process Flow Diagram (PFD). This is a block-flow diagram
21 depicting the major pieces of the process equipment and
22 major process streams.
- 23 • Piping and Instrumentation Diagrams (P&IDs). This
24 depicts all equipment, piping and instrumentation involved
25 in the process. The instrumentation shall be represented
26 utilizing standard symbology of the Instrument Society of
27 America (ISA).

1 Design Report

2 40. Respondent shall submit a design report that will cover
3 both the above ground treatment system and the extraction &
4 capture zone. This report shall include but not be limited to:

- 5 • PFD, final version
- 6 • P&IDs, final version
- 7 • Equipment Process Data Sheets. These data sheets shall
8 show all relevant process information necessary for
9 preparation of equipment mechanical specifications.
- 10 • Expected Usages of Chemicals and Other Expendables.
- 11 • Layouts. These drawings shall show all major equipment
12 items such that safety, operations and maintenance access
13 can be evaluated.
- 14 • Materials Selections. Materials for all equipment,
15 piping, instruments, etc., in contact with any process
16 fluids shall be indicated. Some materials will be specified
17 in the aforementioned piping materials specification or
18 equipment process data sheets; others will require separate
19 documentation.
- 20 • Civil, structural, piping, electrical and mechanical
21 drawings (as necessary)
- 22 • Basis of Operation Report. This will include plans for
23 monitoring the aquifer and extraction system and the above
24 ground equipment and treatment system.
- 25 • Construction bid package

26 41. Respondent shall begin pumping and treating the
27 contaminated groundwater within four months of EPA approval of
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1 the Design Report. Respondent shall submit Record Drawings
2 thirty (30) days after pump and treat operations begin.

3 Groundwater Monitoring Reports

4 42. Respondent shall submit quarterly groundwater
5 monitoring reports that include a summary of analytical data,
6 data validation comments, conclusions and pertinent corrective
7 actions, if necessary. It shall also include data interpretation
8 with isopleths of groundwater elevation and chemical
9 concentrations and discussion of trends and patterns of change.

10 Quality Assurance and Sampling

11 43. The data that will be gathered pursuant to this Order
12 may be used by EPA for the site human health and environmental
13 risk assessment. All sampling and analyses performed pursuant to
14 this Order shall conform to EPA direction, approval, and guidance
15 regarding sampling, quality assurance/quality control (QA/QC),
16 data validation, and chain of custody procedures. Respondent
17 shall ensure that the laboratory used to perform the analyses
18 participates in a QA/QC program that complies with the
19 appropriate EPA guidance. Respondent shall use the following
20 documents as guidance for QA/QC and sampling: "Preparation of a
21 US EPA Region 9 Field Sampling Plan for Private and State-Lead
22 Superfund Projects," April 1990 and "Environmental Response Team
23 Standard Operating Procedures," OSWER Directive Numbers 9360.4-02
24 through 9360.4-08.

25 44. The Quality Assurance Project Plan (QAPP) shall
26 describe the project objectives and organization, functional
27 activities, and quality assurance and quality control protocols

1 that will be used to achieve the desired DQOs. In addition, the
2 QAPP shall address sampling procedures, sample custody,
3 analytical procedures, data validation, reporting and personnel
4 qualifications. Respondent shall use the following guidance for
5 preparation of the QAPP: "US EPA Region 9 Guidance for Preparing
6 Quality Assurance Project Plans for Superfund Remedial Projects,"
7 September 1989. Respondent shall submit a QAPP within sixty (60)
8 days of EPA approval of the Design Report.

9 45. Respondent shall provide to EPA the quality
10 assurance/quality control procedures followed by all sampling
11 teams and laboratories performing data collection and/or
12 analysis.

13 46. Upon request by EPA, Respondent shall allow EPA or its
14 authorized representatives to take split and/or duplicate samples
15 of any samples collected by Respondent while performing work
16 under this Order. Respondent shall notify EPA not less than five
17 (5) days in advance of any sample collection activity. EPA shall
18 have the right to take any additional samples that it deems
19 necessary.

20 Health and Safety Plan

21 47. Respondent shall submit a Health and Safety Plan
22 (HASP). The HASP shall ensure the protection of the public
23 health and safety during performance of on-site work under this
24 Order. This plan shall be prepared in accordance with EPA's
25 Standard Operating Safety Guide, dated November 1984, and updated
26 July 1988. In addition, the plan shall comply with applicable
27 Occupational Safety and Health Administration (OSHA) regulations

1 found at 29 CFR Part 1910.

2 Reporting

3 48. Respondent shall submit a written progress report to
4 EPA concerning activities undertaken pursuant to this Order every
5 thirtieth day after the date of receipt of EPA's approval of the
6 Work Plan until termination of this Order, unless otherwise
7 directed by the Project Coordinator. These reports shall
8 describe all significant developments during the preceding
9 period, including the work performed and any problems
10 encountered, analytical data received during the reporting
11 period, and the developments anticipated during the next
12 reporting period, including a schedule of completion for the
13 unfinished work from the preceding period and work to be
14 performed, anticipated problems, and planned resolutions of past
15 or anticipated problems.

16 49. Final Report

17 Within sixty (60) days after completion of all removal
18 actions required under this Order, and no later than 15 months
19 after pumping and treating of the groundwater begins, Respondent
20 shall submit for EPA review and approval a final report
21 summarizing the actions taken to comply with this Order. The
22 final report shall conform, at a minimum, with the requirements
23 set forth in section 300.165 of the NCP entitled "OSC Reports".
24 The final report shall include a listing of quantities and types
25 of materials removed, a discussion of removal and disposal
26 options considered for those materials, a listing of the ultimate
27 destination of those materials, a presentation of the analytical

1 results of all sampling and analyses performed, and accompanying
2 appendices containing all relevant documentation generated during
3 the removal action (e.g., manifests, invoices, bills, contracts,
4 and permits). The final report shall also include the following
5 certification signed by the person who supervised or directed the
6 preparation of that report:

7 Under penalty of law, I certify that based on personal
8 knowledge and appropriate inquiries of all relevant
9 persons involved in the preparation of this report, the
10 information submitted is true, accurate, and complete.

11 I am aware that there are significant penalties for
12 submitting false information, including the possibility
13 of fine and imprisonment for knowing violations.

14 Deliverables

15 The following deliverables shall be submitted by Respondent
16 in accordance with the schedule in Attachment A:

- 17 1. Final Groundwater Work Plan, including System
18 Design Basis Technical Memorandum
- 19 2. Engineering Evaluation/Cost Analysis (First draft
20 received)
- 21 3. Health and Safety Plan
- 22 4. Sampling and Analysis Plan, including Quality
23 Assurance Project Plan (QAPP)
- 24 5. Design Report
- 25 6. Record Drawings
- 26 7. Monthly progress reports
- 27 8. Monitoring reports

1 9. Final report

2 Access to Property and Information

3 50. Respondent shall provide and/or obtain access to the
4 Site and appropriate off-site areas, as determined by EPA, and
5 provide access to all records and documentation related to the
6 conditions at the Site and the activities conducted pursuant to
7 this Order as determined by EPA. Such access shall be provided
8 to EPA employees, contractors, agents, consultants, designees,
9 representatives, and State of California representatives. These
10 individuals shall be permitted to move freely at the Site and
11 appropriate off-site areas in order to conduct activities which
12 EPA determines to be necessary with UPRR's Project Coordinator or
13 their authorized representative. Respondent shall submit to EPA,
14 upon receipt, the results of all sampling or tests and all other
15 data generated by Respondent and its contractors, or on the
16 Respondent's behalf during implementation of this Order.

17 51. Where work under this Order is to be performed in areas
18 owned by or in possession of someone other than Respondent,
19 Respondent shall use its best efforts to obtain all necessary
20 access agreements within thirty (30) days after the effective
21 date of this Order, or as otherwise specified in writing by the
22 Project Coordinator. Respondent shall immediately notify EPA if
23 after using its best efforts it is unable to obtain such
24 agreements. Respondent shall describe in writing its efforts to
25 obtain access. EPA may then assist Respondent in gaining access,
26 to the extent necessary to effectuate the response activities
27 described herein, using such means as EPA deems appropriate.

1 52. Respondent and its successors in title shall, at least
2 thirty (30) days prior to the conveyance of any interest in real
3 property at the site, give written notice of this Order to the
4 transferee and written notice to EPA and the State of the
5 proposed conveyance, including the name and address of the
6 transferee. The party conveying its interest shall require that
7 the transferee comply with Access to Property, Sections 56-57,
8 and shall provide written evidence of same to EPA prior to
9 conveyance of its interest.

10 Record Retention, Documentation, Availability of Information

11 53. Respondent shall preserve all documents and information
12 relating to work performed under this Order, or relating to the
13 hazardous substances found on or released from the Site, for ten
14 years following completion of the removal actions required by
15 this Order. At the end of this ten year period and thirty (30)
16 days before any document or information is destroyed, Respondent
17 shall notify EPA that such documents and information are
18 available to EPA for inspection, and upon request, shall provide
19 the originals or copies of such documents and information to EPA.
20 In addition, Respondent shall provide documents and information
21 retained under this section at any time before expiration of the
22 ten year period at the written request of EPA.

23 54. Respondent may assert a business confidentiality claim
24 pursuant to 40 CFR § 2.203(b) with respect to part or all of any
25 information submitted to EPA pursuant to this Order, provided
26 such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. §
27 9604(e)(7). Analytical and other data specified in section

1 104(e)(7)(F) of CERCLA shall not be claimed as confidential by
2 the Respondent. EPA may disclose information covered by a
3 business confidentiality claim only to the extent permitted by,
4 and by means of the procedures set forth at, 40 CFR Part 2,
5 Subpart B. If no confidentiality claim accompanies the
6 information when it is received by EPA, EPA may make it available
7 to the public without further notice to Respondent.

8 Off-Site Shipments

9 55. All hazardous substances, pollutants or contaminants
10 removed off-site pursuant to this Order for treatment, storage or
11 disposal shall be treated, stored, or disposed of at a facility
12 in compliance, as determined by EPA, with the EPA Revised "Off-
13 Site Policy," OSWER Directive Number 9834.11, November 13, 1987.
14 (See 42 U.S.C. § 9621(d)(3).) If any wastes are shipped out-of-
15 state, prior notification is required, consistent with OSWER
16 Directive 9330.2-07, September 14, 1989.

17 Compliance With Other Laws

18 56. All actions required pursuant to this Order shall be
19 performed in accordance with all applicable local, state, and
20 federal laws and regulations except as provided in CERCLA
21 § 121(e) and 40 CFR § 300.415(i). In accordance with 40 CFR
22 section 300.415(i), all on-site actions required pursuant to this
23 Order shall, to the extent practicable, as determined by EPA,
24 considering the exigencies of the situation, attain applicable or
25 relevant and appropriate requirements (ARARs) under federal
26 environmental, state environmental, or facility siting laws.
27 (See "The Superfund Removal Procedure for Consideration of ARARs
28

1 for Removal Actions," OSWER Directive No. 9360.3-02, August
2 1991).

3 Emergency Response and Notification of Releases

4 57. If any incident, or change in site conditions, during
5 the activities conducted pursuant to this Order causes or
6 threatens to cause an additional release of hazardous substances
7 from the Site or an endangerment to the public health, welfare,
8 or the environment, the Respondent shall immediately take all
9 appropriate action to prevent, abate or minimize such release or
10 endangerment caused or threatened by the release. Respondent
11 shall also immediately notify the Project Coordinator or, in the
12 event of her unavailability, shall notify the Regional Duty
13 Officer, Emergency Response Section, EPA Region IX, (415) 744-
14 2000, of the incident or site conditions.

15 58. In addition, in the event of an actual release of a
16 hazardous substance, Respondent shall immediately notify EPA's
17 Emergency Response Section at (415) 744-2000 and the National
18 Response Center at telephone number (800) 424-8802. Respondent
19 shall submit a written report to EPA within seven (7) days after
20 each release, setting forth the events that occurred and the
21 measures taken or to be taken to mitigate any release or
22 endangerment caused or threatened by the release and to prevent
23 the reoccurrence of such a release. This reporting requirement
24 is in addition to, not in lieu of, reporting under CERCLA section
25 103(c) and section 304 of the Emergency Planning and Community
26 Right-To-Know Act of 1986, 42 U.S.C. sections 11001 et seq.

27 VII. AUTHORITY OF THE EPA PROJECT COORDINATOR

1 59. The EPA Remedial Project Manager (RPM) shall be
2 responsible for overseeing the proper and complete implementation
3 of this Order. The RPM shall have the authority vested in an On-
4 Scene Coordinator (OSC) by the NCP, including the authority to
5 halt, conduct, or direct any work required by this Order, or to
6 direct any other response action undertaken by EPA or Respondent
7 at the Site.

8 60. EPA and Respondent shall have the right to change their
9 designated RPM or Project Coordinator. EPA shall notify
10 Respondent, and Respondent shall notify EPA no later than three
11 (3) days before such a change is made. Notification may
12 initially be made orally, but shall be followed promptly by
13 written notice.

14 VIII. REIMBURSEMENT OF COSTS

15 61. Respondent shall reimburse EPA for all response costs
16 incurred by the United States in connection with the Site and all
17 costs incurred by the United States in overseeing and enforcing
18 Respondent's implementation of the requirements of this Order.
19 EPA may submit to Respondent periodically, but no more often than
20 on an annual basis, a bill for response costs incurred by the
21 United States with respect to the Site. EPA's cost summary
22 information shall be provided to Respondent with billings and
23 shall serve as the basis for the billings. Oversight and
24 response costs shall include indirect costs and other costs
25 incurred by EPA, its employees, agents, contractors, consultants
26 and other authorized and/or designated representatives in
27 connection with EPA's response action and oversight relative to

1 the Site.

2 62. Respondent shall, within thirty (30) days of receipt of
3 the bill, remit a cashier's or certified check for the amount of
4 those costs made payable to the "Hazardous Substances Superfund,"
5 to the following address:

6 EPA Region IX
7 ATTN: Superfund Accounting
8 P.O. Box 360863M
9 Pittsburgh, PA 15251

10 Respondent shall simultaneously transmit a copy of the check to
11 Holly Hadlock, EPA, 75 Hawthorne Street, H-7-3, San Francisco, CA
12 94105. Payments shall be designated as "Oversight and Response
13 Costs - Western Pacific Site" and shall identify the payor's name
14 and address, the EPA site identification number (R4), and the
15 docket number of this Order.

16 63. Interest at the rate established under 107(a) of CERCLA
17 shall begin to accrue on the unpaid balance from the day after
18 the expiration of the thirty (30) day period, notwithstanding any
19 dispute or an objection to any portion of the costs.

20 64. Respondent, on or before the due date, shall pay the
21 full amount of the costs billed into the Hazardous Substances
22 Trust Fund, as specified in paragraph 67 above, on or before the
23 due date. Respondent shall simultaneously transmit a copy of its
24 check to the EPA RPM.

25 IX. DISPUTE RESOLUTION

26 65. The parties to this Order shall attempt to resolve,
27 expeditiously and informally, any disagreements concerning this
28 Order.

1 X. FORCE MAJEURE

2 68. Respondent agrees to perform all requirements under
3 this Order within the time limits established under this Order,
4 unless the performance is delayed by a force majeure. For
5 purposes of this Order, a force majeure is defined as any event
6 arising from causes beyond the control of Respondent or of any
7 entity controlled by Respondent, including but not limited to its
8 contractors and subcontractors, that delays or prevents
9 performance of any obligation under this Order despite
10 Respondent's best efforts to fulfill the obligation. Force
11 majeure does not include financial inability to complete the work
12 or increased cost of performance.

13 69. Respondent shall notify EPA orally within twenty-four
14 (24) hours after the event, and in writing within five (5) days,
15 after Respondent becomes or should have become aware of events
16 which constitute a force majeure. Such notice shall: identify
17 the event causing the delay or anticipated delay; estimate the
18 anticipated length of delay, including necessary demobilization
19 and re-mobilization; state the measures taken or to be taken to
20 minimize the delay; and estimate the timetable for implementation
21 of the measures. Respondent shall take all reasonable measures
22 to avoid and minimize the delay. Failure to comply with the
23 notice provision of this section shall waive any claim of force
24 majeure by the Respondent.

25 70. If EPA determines a delay is or was attributable to a
26 force majeure, the time period for performance under this Order
27 shall be extended as deemed necessary by EPA. Such an extension

1 shall not alter Respondent's obligation to perform or complete
2 other tasks required by the Order which are not directly affected
3 by the force majeure.
4

5 **XI. STIPULATED AND STATUTORY PENALTIES**

6 71. For each day, or portion thereof, that Respondent fails
7 to fully perform any requirement of the Order in accordance with
8 the schedule set forth, Respondent shall be liable as follows:

<u>Period of Failure to Comply</u>	<u>Penalty per Violation per Day</u>
10 1st through 14th day	\$1000
11 15th through 30th day	\$3,500
12 31st through 45th day	\$10,000
13 46th day and beyond	\$15,000

14 72. The stipulated penalties do not preclude EPA from
15 pursuing any other remedies or sanctions which are available to
16 EPA because of Respondent's failure to comply with this Order.

17 73. Upon written demand by EPA, payment shall be made and
18 interest shall accrue on late payments in accordance with section
19 VIII in this order - Reimbursement of Costs.

20 74. Nothing herein shall prevent the simultaneous accrual
21 of separate penalties for separate violations of this Order.
22 Penalties are assessed per violation per day. Penalties shall
23 accrue regardless of whether EPA has notified Respondent of a
24 violation or act of noncompliance. Respondent must perform the
25 work even if stipulated penalties are assessed.

26 75. Violation of any provision of this Order may subject
27 Respondent to civil penalties of up to twenty-five thousand
28

1 dollars (\$25,000) per violation per day, as provided in section
2 106(b)(1) of CERCLA, 42 U.S.C. section 9606(b)(1). Respondent
3 may also be subject to punitive damages in an amount up to three
4 times the amount of any cost incurred by the United States as a
5 result of such violation, as provided in section 107(c)(3) of
6 CERCLA, 42 U.S.C. section 9607(c)(3). Should Respondent violate
7 this Order or any portion hereof, EPA may carry out the required
8 actions unilaterally, pursuant to section 104 of CERCLA, 42
9 U.S.C. section 9604, and/or may seek judicial enforcement of this
10 Order pursuant to section 106 of CERCLA, 42 U.S.C. section 9606.

11 **XII. RESERVATION OF RIGHTS**

12 76. Nothing herein shall limit the power and authority of
13 EPA or the United States to take, direct, or order all actions
14 necessary to protect public health, welfare, or the environment
15 or to prevent, abate, or minimize an actual or threatened release
16 of hazardous substances, pollutants or contaminants, or hazardous
17 or solid waste on, at, or from the Site. Further, nothing herein
18 shall prevent EPA from seeking legal or equitable relief to
19 enforce the terms of this Order, including the right to seek
20 injunctive relief and/or the imposition of statutory penalties
21 and/or punitive damages or from taking any other legal or
22 equitable action as it deems appropriate and necessary, or from
23 requiring the Respondent in the future to perform additional
24 activities pursuant to CERCLA or any other applicable law. EPA
25 reserves the right to bring an action against Respondent under
26 section 107 of CERCLA, 42 U.S.C. section 9607, for recovery of
27 any response costs incurred by the United States related to this

1 Order or the Site and not reimbursed by Respondent.

2 XIII. OTHER CLAIMS

3 77. By issuance of this Order, the United States and EPA
4 assume no liability for injuries or damages to persons or
5 property resulting from any acts or omissions of Respondent. The
6 United States or EPA shall not be deemed a party to any contract
7 entered into by the Respondent or its directors, officers,
8 employees, agents, successors, representatives, assigns,
9 contractors, or consultants in carrying out activities pursuant
10 to this Order.

11 78. Nothing in this Order constitutes a satisfaction of or
12 release from any claim or cause of action against the Respondent
13 or any person not a party to this Order, for any liability such
14 person may have under CERCLA, other statutes, or the common law,
15 including but not limited to any claims of the United States for
16 costs, damages and interest under section 106(a) and 107(a) of
17 CERCLA, 42 U.S.C. § 9606(a) and 9607(a).

18 79. This Order does not constitute a preauthorization of
19 funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).
20 The Respondent waives any claim to payment under sections 106(b),
21 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611 and 9612,
22 against the United States of the Hazardous Substances Superfund
23 arising out of any activity performed under this Order.

24 80. No action or decision by EPA pursuant to this Order
25 shall give rise to any right to judicial review except as set
26 forth in section 113(h) of CERCLA, 42 U.S.C. S 9613(h).

27 XIV. COVENANT NOT TO SUE

81. Upon issuance of the EPA notice referred to in section XX, EPA covenants not to sue Respondent for judicial imposition of damages or civil penalties for any failure to perform obligations agreed to in this Order except as otherwise reserved herein.

XV. CONTRIBUTION

82. With regard to claims for contribution against Respondent for matters addressed in this Order, the Parties hereto agree that the Respondent is entitled to such protection from contribution actions or claims to the extent provided by section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

83. Nothing in this Order precludes Respondent from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XVI. INDEMNIFICATION

84. Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, and employees from any and all claims or causes of action arising from, or on account of, acts or omissions of Respondent, its officers, its heirs, directors, officers, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into by Respondent in carrying out activities under this Order.

85. Respondent agrees to pay the United States all costs

1 incurred by the United States including, but not limited to,
2 attorney's fees and other expenses of litigation and settlement
3 arising from, or on account of, claims made against the United
4 States based on acts or omissions of Respondent, its officers,
5 directors, employees, agents, contractors, subcontractors, and
6 any persons acting on its behalf or under its control, in
7 carrying out activities pursuant to this Order. The United
8 States shall not be held out as a party to any contract entered
9 into by or on behalf of Respondent, in carrying out activities
10 pursuant to this Order. Neither the Respondent nor any such
11 contractor shall be considered an agent of the United States.

12 86. Respondent waives all claims against the United States
13 for damages or reimbursement or for set off of any payments made
14 or to be made to the United States, arising from or on account of
15 any contract, agreement, or arrangement between Respondent and
16 any person for performance of Work on or relating to the Site,
17 including, but not limited to, claims on account of construction
18 delays.

19 87. In addition, Respondent shall indemnify and hold
20 harmless the United States with respect to any and all claims for
21 damages or reimbursement arising from or on account of any
22 contract, agreement, or arrangement between any one or more of
23 Respondent, and any persons for performance of Work on or
24 relating to the Site, including, but not limited to, claims on
25 account of construction delays.

26 XVII. INSURANCE

27 88. At least seven (7) days prior to commencing any on-site
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1 work under this Order, the Respondent shall secure, and shall
2 maintain for the duration of this Order, comprehensive general
3 liability insurance and automobile insurance with limits of two
4 (2) million dollars each, combined single limit. The United
5 States shall be named as an insured for all such insurance
6 policies. Within the same time period, the Respondent shall
7 provide EPA with certificates of such insurance and a copy of
8 each insurance policy. If the Respondent demonstrates by
9 evidence satisfactory to EPA that any contractor or subcontractor
10 maintains insurance equivalent to that described above, or
11 insurance covering the same risks but in a lesser amount, then
12 the Respondent need provide only that portion of the insurance
13 described above which is not maintained by such contractor or
14 subcontractor.

15 XVIII. MODIFICATIONS

16 89. Modifications to any plan or schedule may be made in
17 writing by the RPM or at the RPM's oral direction. If the RPM
18 makes an oral modification, it will be memorialized in writing
19 within five (5) days; provided, however, that the effective date
20 of the modification shall be the date of the RPM's oral
21 direction. Any other requirements of the Order may be modified
22 in writing by mutual agreement of the parties.

23 90. If Respondent seeks permission to deviate from any
24 approved Work Plan or schedule, Respondent's Project Coordinator
25 shall submit a written request to EPA for approval outlining the
26 proposed Work Plan modification and its basis.

27 91. No informal advice, guidance, suggestion, or comment by
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1 EPA regarding reports, plans, specifications, schedules, or any
2 other writing submitted by the Respondent shall relieve the
3 Respondent of its obligation to obtain such formal approval as
4 may be required by this Order, and to comply with all
5 requirements of this Order unless it is formally modified.
6 If EPA determines that additional response actions not included
7 in an approved plan are necessary to protect public health,
8 welfare, or the environment, EPA will notify Respondent of that
9 determination. Unless otherwise stated by EPA, within thirty
10 days of receipt of notice from EPA that additional response
11 activities are necessary to protect public health, welfare, or
12 the environment, Respondent shall submit for approval by EPA a
13 Work Plan for the additional response activities. The plan shall
14 conform to the applicable requirements of section VI of this
15 Order. Upon EPA's approval of the plan, Respondent shall
16 implement the plan for additional response activities in
17 accordance with the provisions and schedule contained therein.
18 This section does not alter or diminish the RPM's authority to
19 make oral modifications to any plan or schedule pursuant to
20 Section XVIII - Modifications.

21 22 XIX. NOTICE OF COMPLETION

23 92. When EPA determines, after EPA's review of the Final
24 Report, that all work has been fully performed in accordance with
25 this Order, and that all goals and objectives of this Order and
26 the Statement of Work have been satisfied, with the exception of
27 any continuing obligations required by this Order, EPA will

1 provide notice to the Respondent. If EPA determines that any
2 removal activities have not been completed in accordance with
3 this Order, EPA will notify the Respondent, provide a list of the
4 deficiencies, and require that Respondent modify the Work Plan to
5 correct such deficiencies. The Respondent shall implement the
6 modified and approved Work Plan and shall submit a modified Final
7 Report in accordance with the EPA notice. Failure by Respondent
8 to implement the approved modified Work Plan shall be a violation
9 of this Order.

10 XX. SEVERABILITY

11 93. If a court issues an order that invalidates any
12 provision of this Order or finds that Respondent has sufficient
13 cause not to comply with one or more provisions of this Order,
14 Respondent shall remain bound to comply with all provisions of
15 this Order not invalidated or determined to be subject to a
16 sufficient cause defense by the court's order.

17 XXI. EFFECTIVE DATE


18 94. This Order is effective on the date signed by EPA and
19 Respondent.
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1 XXII. CERTIFICATION

2 95. The undersigned representative of Respondent certifies,
3 represents, and warrants that he/she is fully authorized to enter
4 into the terms and conditions of this Order and to bind the party
5 he/she represents to this document.

6
7 It is so ORDERED and Agreed this 27th day of August, 1993.
8
9

10 U.S. Environmental Protection Agency

11 By:  Date: 8-27-93
12 Jeff Zelikson
13 Director, Hazardous Waste Management Division
14 Region IX

15 UNION PACIFIC RAILROAD, a Utah corporation

16 By:  Date: 8/20/93
17 Title Vice President - Law
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ATTACHMENT A
SCHEDULE FOR DELIVERABLES

Deliverable	Due Date
Final Groundwater Work Plan	30 days after EPA request for revisions of draft previously submitted to EPA
Engineering Evaluation/Cost Analysis	30 days after EPA request for revisions of draft previously submitted to EPA
Design Report	3 months after Work Plan approval
Sampling & Analysis Plan	2 months after Design Report approval
Quality Assurance Plan	2 months after Design Report approval
Record Drawings	30 days after pump and treat operations begin
Final Report	60 days after all removal actions completed, no later than 15 months after pumping begins
Progress Reports	Monthly
Groundwater Monitoring Reports	Quarterly